

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

SCOTT DIERING,)	
)	
Plaintiff,)	7:06CV5010
)	
v.)	
)	
REGIONAL WEST MEDICAL)	MEMORANDUM AND ORDER
CENTER,)	
)	
Defendant.)	
_____)	

This matter is before the Court on the defendant's statement of appeal of magistrate judge's order granting a jury trial (Filing No. 38). For the reasons stated below, this statement of appeal will be denied.

STANDARD OF REVIEW

In an appeal from a magistrate judge's order on a pretrial matter within 28 U.S.C. § 636(b)(1)(A), a district court may set aside any part of the magistrate judge's order shown to be clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A); NECivR 72.2(c); *United States v. Apker*, 139 F.R.D. 129, 131 (D. Neb. 1991). A district court may reverse a magistrate judge's order only if the court "is left with the definite and firm conviction that a mistake has been committed" or the order fails to apply the relevant, existing law. *Brooks v. Lincoln National Life Ins. Co.*, No. 8:05CV118, 2006 WL 2487937, at *3 (D. Neb. Aug. 25, 2006).

DISCUSSION

NECivR 81.1 provides that the right to a jury trial will be waived unless formally demanded within the time limits set forth in Fed. R. Civ. P. 81(c). Plaintiff's demand for a jury trial was untimely, and he has not set forth a satisfactory explanation why he failed to comply with the local rules and the Federal Rules of Civil Procedure.

The magistrate judge, however, found that plaintiff was entitled to relief under Fed. R. Civ. P. 39(b), which states, in pertinent part: "notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by a jury of any or all issues." Despite plaintiff's failure to timely file a demand a jury trial, the Court finds no abuse of discretion in the magistrate judge's decision to grant relief under Rule 39(b). For this reason, the Court will deny defendant's statement of appeal.

IT IS ORDERED that the defendant's statement of appeal of magistrate judge's order granting a jury trial (Filing No. 38) is denied.

DATED this 28th day of February, 2007.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court